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No. 93-212

In The

Supreme Court of the United States

October Term, 1993

HIGHLAND FEDERAL SAVINGS AND LOAN ASSOCIATION, H.F.S. CORPORATION, BEN KARMELICH AND SELINA ELIZABETH ("BETTY") PRATT,

Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, BY THE CITY OF LOS ANGELES, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District

MOTION OF SAVINGS & COMMUNITY BANKERS OF AMERICA AND CALIFORNIA LEAGUE OF SAVINGS INSTITUTIONS FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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The Savings and Community Bankers of America ("SCBA") and the California League of Savings Institutions ("Cal League") hereby move the Court for leave to file the attached "Brief of Amici Curiae In Support Of Petition For Writ Of Certiorari To The Court Of Appeal Of The State Of California, Second Appellate District". The consent of Petitioner Highland Federal Savings and Loan Association to the filing of such brief has been obtained. The consent of the Respondents has been requested but refused.

I.

INTEREST OF AMICI CURIAE

The SCBA is the national trade association for savings institutions and its membership includes most of the savings institutions doing business in the United States. The Cal League is the California trade association for savings institutions and its membership includes most of the savings institutions doing business in California. The majority of the members of both the SCBA and the Cal League are federally chartered.

The SCBA and Cal League are interested in the preemptive effect upon state law of the Home Owners' Loan Act, 12 U.S.C. § 1461, *et seq.* ("HOLA") and regulations promulgated under HOLA. They (or their predecessors) were *amici curiae* in cases dealing with such preemption, including what is today the leading case on the subject, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141, 102 S.Ct. 3014 (1982).

II.

ISSUES ADDRESSED BY AMICI

The issues addressed by the SCBA and Cal League are as follows:

1. The uncertainty which the Court of Appeal decision has engendered concerning the preemptive effect of HOLA and regulations promulgated under HOLA;

2. The deleterious effect of the Court of Appeal decision upon the "dual banking" system contemplated by HOLA; and

3. The impact of the Court of Appeal decision upon the integrity of the regulatory process.

Accordingly, the SCBA and Cal League request that leave to file the attached *amicus curiae* brief be granted.

Respectfully submitted,

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Attorney for Savings & Community Bankers of America and California League of Savings Institutions

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I.

STATEMENT OF INTEREST

A. Savings & Community Bankers Of America

The Savings & Community Bankers of America ("SCBA") is the national trade association for the American savings industry. Its membership includes most of the savings associations and savings banks in the United States, including ninety that are headquartered in California. The majority of the members of the SCBA, both in California and elsewhere, are federally chartered.

The SCBA provides various services to its members including, among other things, technical assistance, educational products and programs, publications, and meetings. One of the objectives of the aforedescribed services is to assist members in complying with the requirements of federal and state law and regulations. From time to time the SCBA participates, in the capacity of an *amicus curiae*, in litigation involving issues of interest to its members.

The SCBA and its membership are naturally concerned about legal developments which generate uncertainty as to whether particular activities of savings associations are governed by federal or state law. Accordingly, the SCBA and its members – particularly those that are federally chartered – are profoundly interested in the preemptive effect of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. § 1461, *et seq.*, and regulations promulgated under HOLA upon the application of state law to the operations of federal associations.

A predecessor of the SCBA, the United States League of Savings Institutions, was an *amicus curiae* in a landmark decision on the subject of federal preemption under HOLA, *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141, 102 S.Ct. 3014 (1982).

B. California League Of Savings Institutions.

The California League of Savings Institutions ("Cal League") is a trade association composed of most of the more than one hundred savings institutions operating in California. The vast majority of such institutions, as measured by deposits, are federally chartered. Accordingly, the Cal League is vitally interested in legal developments affecting the operations of federally chartered savings institutions in California.

From time to time, the Cal League participates, in the capacity of an *amicus curiae*, in litigation involving issues that are of concern to its members. The Cal League was an *amicus curiae* in *Fidelity Federal Savings & Loan Association v. de la Cuesta, supra.*

II.

SUMMARY OF ARGUMENT

Certiorari should be granted for the following reasons:

1. It is necessary to resolve the uncertainty which the decision of the Court of Appeal has engendered as to the preemptive effect of HOLA and regulations promulgated under HOLA.

2. The Court of Appeal decision undermines the "dual banking" system contemplated by HOLA in that it tends to subject federally chartered institutions to state regulation.

3. The Court of Appeal decision is a threat to the regulatory process in that it fails to give effect to the plain meaning of two federal regulations, 12 C.F.R. §§ 545.1 and 545.2.

III.

ARGUMENT

A. The Granting Of Certiorari Is Necessary To Resolve The Uncertainty Which The Decision Of The Court Of Appeal Has Engendered.

Prior to the subject Court of Appeal decision, the preemptive effect of HOLA and the HOLA regulations appeared to be well established. There was a large body of case law which had developed upholding the preemptive effect of HOLA and regulations promulgated under HOLA. This Court, in *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141, 102 S.Ct. 3014 (1982), had held that HOLA and regulations promulgated under HOLA preempted state law. In addition, the federal agency responsible for administering HOLA, now the Office of Thrift Supervision ("OTS"), promulgated regulations, 12 C.F.R. §§ 545.1 and 545.2, which clearly expressed an intent to permit federal associations to do whatever federal law permitted without being bound by state law limitations.

While the Court of Appeal decision pays lip service to the preexisting case law including this Court's decision in *de la Cuesta*, the Court of Appeal decision undermines that case law by refusing to give effect to the plain meaning of 12 C.F.R. §§ 545.1 and 545.2. Thus the Court of Appeal decision effectively flouts the decision of a myriad of courts including the decision of this Court in *de la Cuesta*.

The concerns of *amici* are very practical. Every federal association must establish policies and procedures governing its activities. In the case of most federal associations, presumably the propriety of these policies and procedures was predicated on the assumption that federal law and regulations governed. The decision of the Court of Appeal, however, challenges the correctness of that assumption. As a result, federal associations have been plunged into a legal limbo with regard to the law which governs their operations. That legal limbo could be highly disruptive and detrimental to federal associations, to their customers, and to the integrity of the system of federal savings institutions as a whole.

B. The Court Of Appeal Decision Undermines The "Dual Banking" System Contemplated By HOLA.

HOLA contemplates a "dual banking" system in which there are parallel systems of savings institutions. One is a system of state chartered institutions governed by state law (except insofar as federal insurance regulations apply), and the other is a system of federally chartered institutions governed, to the extent determined by

the OTS, by federal law. Indeed, a stated objective of Congress in enacting HOLA was to have a system of savings institutions that would operate in accordance with the "best practices of local mutual thrift and home-financing institutions in the United States." (12 U.S.C. § 1464(a)).

Overall, the "dual banking" system of parallel state chartered savings institutions and federally chartered savings institutions has worked well. It has permitted opportunities for innovation at the state level while permitting a pattern of leadership by federal institutions.

The Court of Appeal decision, however, undermines the "dual banking" system contemplated by HOLA. It provides a mechanism for subverting the principle of federal regulation of federal institutions and subjecting all savings institutions – both state chartered and federally chartered – to the whims of state regulation.

C. The Court Of Appeal Decision Is A Threat To The Integrity Of The Regulatory Process.

An essential premise of the regulatory process is that courts will endeavor to interpret and apply regulations in the manner contemplated by their promulgators. Otherwise the regulatory process becomes a sham in which the real decision making authority is vested not in the regulatory agencies but, rather, in the judiciary.

In the case of 12 C.F.R. §§ 545.1 and 545.2 certainly the intent that federal law preempt the application of state law to federal associations is apparent. In refusing to give effect to that intent, the Court of Appeal decision

undermines the integrity of the regulatory process, both as to the OTS and as to regulatory agencies generally.

IV.

CONCLUSION

The Court of Appeal decision has dire implications for the doctrine of federal preemption under HOLA as it has evolved over the years and as articulated by this Court in *de la Cuesta*. For that reason, the SCBA and Cal League believe that certiorari should be granted.

Respectfully submitted,

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